

# **Exhibit 5**

**(The errata to this deposition is also attached)**

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Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Case No. 1:20-cv-01106

5 - - - - -x

6 KEWAZINGA CORP., :

:

7 Plaintiff, :

:

8 - vs - :

:

9 GOOGLE LLC, :

:

10 Defendant. :

11 - - - - -x

12 June 10, 2020

13 10:57 a.m.

14 Jupiter, Florida

15 \*\*\*CONFIDENTIAL\*\*\*

16  
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18  
19  
20 VIDEOTAPED VIRTUAL DEPOSITION UPON  
21 ORAL EXAMINATION OF LEONARD SMALHEISER, held at  
22 the above-mentioned time and place, before Randi  
23 Friedman, a Registered Professional Reporter,  
24 within and for the State of New York.  
25 Job No. CS4135135

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APPEARANCES:

STROOCK & STROOCK & LAVAN, LLP  
Attorneys for Plaintiff  
180 Maiden Lane  
New York, New York 10038

BY: SAUNAK K. DESAI, ESQ.  
IAN G. DiBERNARDO, ESQ.

DESMARAIS, LLP  
Attorneys for Defendant

230 Park Avenue  
New York, New York 10169  
BY: ELIZABETH WEYL, ESQ.  
JOHN M. DESMARAIS, ESQ.  
STEVEN M. BALCOF, ESQ.  
DAVID A. FREY, ESQ.

\* \* \*

ALSO PRESENT:  
Marcelo Rivera - Videographer

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MR. DESAI: Objection, form.

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BY MS. WEYL:

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MR. DESAI: Same objection.

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BY MS. WEYL:

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MR. DESAI: Objection to form.

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THE WITNESS: No, that's not

correct.

BY MS. WEYL:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DESAI: Objection to form.

That mischaracterizes prior testimony.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BY MS. WEYL:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DESAI: Objection to form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BY MS. WEYL:

Q

[REDACTED]

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2 BY MS. WEYL:

3 Q But you understand that Google does  
4 invest in Street View; is that correct?

5 MR. DESAI: Objection to form.

6 THE WITNESS: I can only assume  
7 that they are, because I don't have access  
8 to metrics that tell me that they are.

9 BY MS. WEYL:

10 Q So based on your understanding of --  
11 without needing to consider any metrics about  
12 Street View, what is your understanding of the  
13 amount of resources that Google has devoted to  
14 Street View from 2013 to 2020?

15 MR. DESAI: Objection to form.

16 THE WITNESS: I could not begin to  
17 tell you what that amount of money or what  
18 that number is. I don't know.

19 BY MS. WEYL:

20 Q But you are aware that Google invested  
21 in its Street View service between the years of  
22 2013 and 2020; is that correct?

23 MR. DESAI: Same objection.

24 THE WITNESS: I'm sorry. There  
25 was an unavoidable noise outside my location

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2 and I didn't want everyone to have to hear  
3 it.

4 BY MS. WEYL:

5 Q No problem at all.

6 So you were aware that Google invested  
7 in its Street View service between the years of  
8 2013 and 2020; is that correct?

9 MR. DESAI: Objection to form.

10 THE WITNESS: I cannot quantify  
11 whether or not Google spent money on Street  
12 View in between those years or how much they  
13 might have spent.

14 BY MS. WEYL:

15 Q But you understand that Google --  
16 strike that.

17 So you have no understanding of  
18 whether Google invested any resources in the  
19 Street View service between 2013 and 2020; is  
20 that correct?

21 MR. DESAI: Objection to form.

22 THE WITNESS: As mentioned, I  
23 can't quantify the amount of money that  
24 Google spent in between those years or if  
25 they spent that money. I can't put a number

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2 on it. I don't know.

3 BY MS. WEYL:

4 Q But you're aware that Google continued  
5 to provide its Street View service at least  
6 between the years of 2013 and 2020; is that  
7 correct?

8 A I believe that they continued to  
9 provide that service, to the best of my  
10 knowledge.

11 Q And you're aware that between the  
12 years of 2013 and 2020, Google expanded its  
13 coverage of the Street View service?

14 MR. DESAI: Objection to form.

15 THE WITNESS: I don't know  
16 specifically how Google's coverage changed  
17 in between those years.

18 BY MS. WEYL:

19 Q In 2013, did you understand that  
20 Google's Street View service was an important  
21 feature to Google's products?

22 MR. DESAI: Objection to form.

23 THE WITNESS: It was my assumption  
24 that it was an important asset for Google.

25



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2 BY MS. WEYL:

3 Q What was the purpose of these  
4 documents?

5 A The purpose of these documents were to  
6 try to determine the level of interest by other  
7 companies in Kewazinga's -- in Kewazinga's  
8 products.

9 Q How were these other companies  
10 identified?

11 MR. DESAI: Objection to form.

12 THE WITNESS: I'm sorry. I need  
13 to ask you to clarify that last question.

14 BY MS. WEYL:

15 Q Certainly.

16 You stated that you worked on drafting  
17 documents for the purpose of trying to determine  
18 the level of interest by other companies in  
19 Kewazinga's products.

20 My question is, how did you identify  
21 what companies to contact?

22 MR. DESAI: Objection to form, and  
23 to the extent it mischaracterizes prior  
24 testimony.

25 THE WITNESS: As a clarification,

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2 I didn't say I drafted the documents. I  
3 said I contributed to the drafting of the  
4 documents. And in terms of identifying  
5 which companies, which I think is what your  
6 question is, we, as a group, were trying to  
7 look for companies where there would be some  
8 synergy between what the companies offered  
9 or might want to offer, and what Kewazinga  
10 had to offer.

11 BY MS. WEYL:

12 Q What companies have you identified as  
13 potential companies that could provide synergy  
14 with Kewazinga?

15 MR. DESAI: Objection to form.

16 THE WITNESS: I think I need you  
17 to clarify that question, please.

18 BY MS. WEYL:

19 Q Did Kewazinga contact any other  
20 companies that it wanted to form a partnership  
21 with?

22 MR. DESAI: Objection to form.

23 THE WITNESS: I believe it did  
24 make contact, yes.  
25

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2 confidential.

3 BY MS. WEYL:

4 Q Just stepping back a couple of  
5 questions, you had noted that this document has  
6 "Confidential- Not for dissemination" on the  
7 bottom; right?

8 A I do see that.

9 Q So if you -- if Kewazinga provided a  
10 document to Google that contained confidential  
11 information, it would have been marked  
12 confidential; is that correct?

13 MR. DESAI: Objection to form.

14 THE WITNESS: I'm not sure that  
15 that's necessarily correct. Sometimes when  
16 you've developed a relationship with a  
17 company and the company is expressing  
18 interest in receiving more documents,  
19 there's an element of trust that gets  
20 created. It's possible that not every  
21 document is marked in that manner, but I do  
22 recall many of these documents being marked  
23 in that manner. And I think that it's very  
24 clear that we were presenting  
25 forward-looking concepts and business

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2 opportunities that we would never share with  
3 a competitor.

4 BY MS. WEYL:

5 Q Did Kewazinga have a Non-Disclosure  
6 Agreement with Google?

7 MR. DESAI: Objection to form.

8 THE WITNESS: I -- as I sit here,  
9 I don't recall if there was an NDA. There  
10 may not have been, but I don't remember.

11 BY MS. WEYL:

12 Q Did Kewazinga have Non-Disclosure  
13 Agreements with other companies it was talking to  
14 in the 2005 and 2006 timeframe?

15 A As I --

16 MR. DESAI: Objection.

17 THE WITNESS: Sorry. We have some  
18 latency here.

19 MR. DESAI: Objection to form.

20 I'll just note that the prior question  
21 didn't have the 2005/2006 timeframe point in  
22 it. Go ahead. You can answer.

23 THE WITNESS: I'm not in a  
24 position to answer the question as to  
25 whether or not any other company had signed

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2 THE WITNESS: I'm not sure that I  
3 was specific about the technology part in  
4 terms of their bad actor status. I would  
5 say that they used some of Kewazinga's  
6 forward ideas and business opportunities in  
7 their own product after they met with us.

8 BY MS. WEYL:

9 Q And specifically what ideas did they  
10 incorporate -- did Google incorporate into its  
11 own products?

12 A Well I would say that they would  
13 include, but not necessarily be limited to  
14 incorporating Navigable Video into Google Earth,  
15 as well as Google Maps as an on-the-ground  
16 extension of those products.

17 I would say that it also included  
18 providing travel destinations and cultural  
19 destinations, and museums and possibly zoos and  
20 aquariums and other interior building locations  
21 as additional navigable experiences.

22 I would say that they also provided  
23 experiences that I believe were captured on  
24 boats, on waterways, that was also part of the  
25 documentation that we provided to them, but,

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2 again, it's not limited to that, and a more  
3 thorough investigation would have to be made.

4 But we clearly said to them, and I  
5 believe that this sentence is included in a  
6 number of the papers that we sent to them, that  
7 miniaturized Kewazinga systems would be placed  
8 atop cars and boats that would ply the streets  
9 and waterways in order to provide navigable  
10 experiences. And to that extent, I think Google  
11 went ahead and took a lot of the forward-looking  
12 ideas that Kewazinga presented it and used it in  
13 their own product.

14 Q Are any of those things covered by  
15 Kewazinga's patents?

16 MR. DESAI: Objection to form.

17 THE WITNESS: I don't know whether  
18 they're covered by the patents. I'm not  
19 sure that they are.

20 BY MS. WEYL:

21 Q Do you know if Google had the idea for  
22 Street View before Kewazinga ever emailed Google  
23 in the 2005/2006 timeframe?

24 MR. DESAI: Objection to form.

25 THE WITNESS: I can't know it for

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2 sure, but I might have been exposed to a  
3 piece of information that suggested that  
4 they might have done some preliminary work  
5 before we contacted them, although we never  
6 knew that they had done preliminary work,  
7 and they never disclosed any preliminary  
8 work that was similar to our invention to  
9 us, either by email or in a telephone call.

10 BY MS. WEYL:

11 Q So in my previous question -- sorry.  
12 I want to get this straight.

13 I asked you if any of the things that  
14 you mentioned were covered by the Kewazinga  
15 patents, and you said that you didn't know; is  
16 that correct?

17 MR. DESAI: Objection.

18 THE WITNESS: That's correct. I'm  
19 sorry, that is correct.

20 BY MS. WEYL:

21 Q And so none of those ideas that you  
22 conveyed were related to the Kewazinga patents,  
23 and so how would Google have disclosed what it  
24 was doing in relation to the invention if all of  
25 the features that you discussed about were not

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2 included in the Kewazinga patents?

3 MR. DESAI: Objection to form.

4 Foundation. And, I mean, I think that's  
5 confusing a lot of different questions that  
6 were asked in the previous 10 to 15 minutes.  
7 You can answer the question.

8 THE WITNESS: I think the  
9 documents that were provided by Kewazinga to  
10 Google, some of which or maybe possibly many  
11 of which were marked as confidential and do  
12 not distribute presented many  
13 forward-looking concepts and business  
14 opportunities to Google that Kewazinga  
15 thought that they could help to offer to  
16 Google and to extend Google's ecosystem, if  
17 you will. Their software ecosystem.

18 BY MS. WEYL:

19 Q Did Kewazinga --

20 A Excuse me. May I finish?

21 Q Yes, you may.

22 A In those documents -- or I should say  
23 in many of those documents, Kewazinga clearly  
24 marked its patents by title of the patent, and I  
25 think more than one patent the title was



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2 presented. I believe that claims were also  
3 either described or excerpted. I think issue  
4 dates of the patents are also included in some or  
5 many of those documents. And I think  
6 descriptions of the patents are included in many  
7 or some of those documents.

8 And so you have a situation where  
9 forward business concepts are being provided.  
10 Evidence of the patents, including their title,  
11 issuance date, claim information and general  
12 descriptions are disclosed. And I think that  
13 Google used that information to further their own  
14 product without disclosing at any point during  
15 that time to Kewazinga that they had a competing  
16 product that was in development.

17 Q Can you point to me some documents  
18 that Kewazinga provided to Google that included  
19 the title, issuance, date and general information  
20 about the Kewazinga patents?

21 MR. DESAI: Objection to form, and  
22 as to how the witness would possibly do that  
23 right now electronically. You can put  
24 documents in front of him and ask him  
25 questions about that.

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C E R T I F I C A T I O N

I, Randi Friedman, Registered  
Professional Reporter and Notary Public of the  
State of New York, do hereby certify:

THAT, the witness whose testimony is herein  
before set forth, was duly sworn by me, and  
THAT, the within transcript is a true record of  
the testimony given by said witness.

I further certify that I am not related  
either by blood or marriage to any of the parties  
to this action; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this day, June 15, 2020.



Randi Friedman, RPR

\* \* \* \* \*

**ERRATA SHEET**


**Name of case:** KEWAZINGA CORP. v. GOOGLE LLC  
**Deposition of:** Leonard Smalheiser  
**Date taken:** June 10, 2020

**Corrections:**

| <b>Page</b> | <b>Line</b> | <b>Change</b>  | <b>Reason</b>  |
|-------------|-------------|--|--|
| 10          | 6-7         | Change "I suppose I was a corporate representative, yes" to "I was only deposed in my personal capacity"   | Correction   |
| 22          | 6           | Change "using" to "filing"   | Clarification  |
| 22          | 21          | Delete "camera limitation – without the"   | Clarification  |
| 22          | 24          | Change "patents" to "patent arguments"   | Clarification  |
| 28          | 14          | Delete "with"  | Misheard/Misspoke  |
| 33          | 10-11       | Change "Yes. As mentioned, there is no specificity" to "Okay. As mentioned, there was no specificity"  | Clarification  |
| 42          | 23          | Change "That is correct" to "It was an 8-digit number"   | Correction. <i>See</i> 29:25-30:18.  |
| 61          | 3           | Change "advice" to "device"  | Misheard/Misspoke  |
| 84          | 11          | Change "'cause" to "because"   | Misheard/Misspoke  |
| 104         | 3           | Changes "No" to "Yes"  | Correction   |
| 104         | 7-9         | Change "I do think attorney advice is reflected in those documents" to be the witness's answer to deposing attorney's question, rather than part of the defending attorney's objection | Witness's answer to question at 104:5-6 is incorrectly attributed to defending attorney. <i>See</i> 104:11-18. |
| 122         | 11          | Change "discussed" to "dismissed"  | Misheard/Misspoke  |
| 124         | 23          | Change "record" to "notice"  | Clarification  |
| 134         | 3-4         | Change "That is correct. That there was" to "I believe that might be correct. There was"   | Correction. <i>See</i> 137:19-139:11.  |
| 152         | 9-10        | Change "Some clarification. The funding" to "Some clarification on the funding"  | Clarification  |
| 158         | 9           | Change "a headquarter" to "headquarters"   | Misheard/Misspoke  |
| 170         | 17          | Change "'cause" to "because"   | Misheard/Misspoke  |
| 173         | 18          | Change "engage" to "gauge"   | Misheard/Misspoke  |
| 187         | 9           | Change "I don't recall if there was an NDA" to "I don't recall if there was an NDA in the 2005 and 2006 timeframe"   | Clarification  |
| 191         | 16          | Delete "almost"  | Misheard/Misspoke  |

|     |    |  |   |
|-----|----|--|---|
| 191 | 23 | Delete “a”   | Misheard/Misspoke   |
| 197 | 24 | Change “Company No. 1’s” to “the first company’s”  | Clarification   |
| 198 | 11 | Change “Company No. 1’s” to “the first company’s”  | Clarification   |
| 225 | 6  | Change “forward” to “forward-looking”  | Misheard/Misspoke   |
| 226 | 12 | Change “presented it and used it” to “presented to it and used them”   | Misheard/Misspoke   |
| 227 | 3  | Change “piece of information that suggested” to “piece of information, at a later time, that suggested”  | Clarification   |
| 227 | 6  | Change “knew that they” “knew at that time that they”  | Clarification   |
| 229 | 9  | Change “forward” to “forward-looking”  | Misheard/Misspoke   |
| 232 | 25 | Change “big” to “small”  | Clarification   |
| 234 | 24 | Change “cause” to “because”  | Misheard/Misspoke   |
| 237 | 20 | Delete “— were”  | Clarification   |
| 246 | 12 | Change “That’s correct” to be part of the witness’s answer to deposing attorney’s question, rather than part of the deposing attorney’s following question | Part of witness’s answer to question at 246:3-6 is incorrectly attributed to deposing attorney. |
| 250 | 4  | Change “sensor” to “censor”  | Clarification   |
| 250 | 5  | Change “to make” to “from making”  | Misheard/Misspoke   |
| 273 | 3  | Change “Google’s” to “Kewazinga’s”   | Correction. <i>See</i> 273:10-20.   |
| 273 | 4  | Change “Google’s” to “Kewazinga’s”   | Correction. <i>See</i> 273:10-20.   |
| 276 | 3  | Delete “was –”   | Clarification   |
| 276 | 6  | Change “its” to “Kewazinga’s”  | Clarification   |

7/10/2020  
Date

  
Leonard Smalheiser